



LAW OFFICE OF KENNETH E. BERGER, LLC

February 2017 Newsletter

SAFETY FIRST JUSTICE ALWAYS



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ATV Accidents: Who Is Liable?

“How David Beat Goliath”

BY KENNETH BERGER

I have long been familiar with Malcolm Gladwell, but only recently sat down to read his books. I started with “Outliers,” which is a great study in what happens when hard work meets opportunity. I then moved on to “David vs. Goliath.” I thought I knew the story, but it turns out my understanding was shallow at best.

Perception forms our reality, and for years I thought of David as the underdog. Which, had he played by Goliath’s rules, he certainly would have been. However, David understood that the only way to defeat Goliath was to change the rules, and thus the outcome. Instead of taking on this giant in close combat, David utilized his skills as a “slinger,” and took down the man of greater size and strength.

When I first opened this practice a little over six

years ago, I knew I couldn’t compete with the Goliaths via traditional marketing. I didn’t have much money and I certainly couldn’t tout my firm’s years of experience. I had to do something different. So I wrote countless articles for our website, consolidated them in book form, started a newsletter, and marketed to people who already knew me. Six years later we are still on the climb, and it’s in large part because we continue to play by our own set of rules.

No matter your objective, if you want to be exceptional, you must by definition, do something different than everyone else. David couldn’t defeat Goliath in traditional combat, so he changed the rules to his advantage and took down the giant. The lessons from this story continue to repeat themselves in business, and are available to us all.

DISCLAIMER: ANY RESULT I MAY ACHIEVE ON BEHALF OF ONE CLIENT IN ONE MATTER DOES NOT NECESSARILY INDICATE SIMILAR RESULTS CAN BE OBTAINED FOR OTHER CLIENTS. IN ADDITION, SOME OF THESE RESULTS WERE OBTAINED IN CONNECTION WITH OTHER FIRMS. I AM A SOUTH CAROLINA INJURY LAWYER, NOT A MIRACLE WORKER. I EVALUATE EVERY CASE ON ITS OWN MERITS AND ONLY ACCEPT A LIMITED NUMBER OF NEW CASES EVERY YEAR. 1

WRONG WAY COLLISION ON THE INTERSTATE

In January 2015, an intoxicated young woman gets behind the wheel of her car after taking multiple shots. Her blood alcohol level is approximately twice the legal limit in South Carolina. She begins driving toward downtown Columbia. When she reaches I-126, she gets on the off-ramp and starts traveling in the wrong direction. The drunk driver crashes head on into an innocent woman who is traveling in the right direction. The vehicles are destroyed. The interstate is covered in debris.

Our client survives the nightmarish DUI crash, but is left with life changing injuries, including a right femoral fracture, two fractures in her left foot, and a left orbital fracture. She also develops acute blood loss anemia due to the trauma. She spends 3 weeks at a physical rehabilitation unit in Columbia working to regain her ability to walk. Her medical expenses from the accident grow to over \$184,000.00.

After battling with the auto insurance carrier over specific language in the policy, we were able to get it reformed so as to provide 150% of the stated coverage. This resulted in a much larger settlement on our client's behalf. Likewise, we successfully negotiated her health insurance lien down as low as possible to maximize her net recovery.

Drunk driving plagues South Carolina's highways. It kills and maims innocent people. Our hope is that by holding DUI drivers – and the entities that over serve them – accountable for the injuries they cause, our roads will become at least a little safer for South Carolina families, and all those who pass through our state.

FOR REFERRING ATTORNEYS

If you are one of our many referring attorneys, we want to thank you for allowing us to serve. Your trust means a great deal.

We seek to strengthen your relationship with the client by providing him/her with a great experience, as well as a great result. Additionally, we always make it a point to emphasize that you are truly the person to thank, as it was your good judgment that allowed us to take part in their representation.

If questions arise in the coming month concerning a life-changing injury or wrongful death case, we are here to help. From simply answering your questions to being associated on or referred the case, please let us know what we can do to benefit you and the client. Likewise, if you have a potential client call us directly, be sure to have him/her say who made the referral so we know who to thank.

To discuss anything from litigation tactics to our core values, call us at (803) 790-2800 or email kberger@bergerlawsc.com.

THE BEST AMONG US:

Steven Morris

Meet Steven Morris of TouchSuite, a business consulting company. As of this month Steven, who has been in merchant services for the past 18 years, has been promoted to Executive VP of Sales. He attributes this accomplishment to never having been one to shy away from the hard tasks and knowing the importance of battling to be better every day. One unique thing about TouchSuite is that they offer a charity donation give back program to merchants that would like to donate to the charity or non-profit organization of their choice. They are actually one of only three companies that offer a give back option to their clients. If you would like to discover how easy taking credit cards can be at your business, you may email smorris@touchsuite.com

FIRM SNAPSHOT:

Then & Now

January 3rd marked the sixth anniversary of the day the doors to the Law Office of Kenneth E. Berger opened for the very first time. A lot has changed since then. When we first started, it was a miracle if my assistant, the printer, and I were all working at the same time. Now, I have a wonderful team of eight that work tirelessly every day to serve our community. However, through the change, a lot has remained the same. We are still a team of individuals who are dedicated to the representation of the injured and aggrieved, and to achieving the best possible outcome for our clients.

Looking back on it, I can understand why a lot of people thought I was crazy to start my own practice. Nonetheless, the past 6 years have been full of learning, serving and growing, and we could not be more elated for the years to come.



ATV ACCIDENTS: WHO IS LIABLE?

Thousands of all-terrain vehicles, or ATVs, are ridden by South Carolinians every year. Some are used for transport or to haul material for work; some are used to play. But as more and more people recognize ATVs for their ruggedness, economy, and fun, ATV-related injuries and deaths have been increasing.

While there are many reasons an ATV may crash, negligence is high on the list. When someone operates this type of vehicle carelessly or without regard for the safety of themselves or others, injury or even death can result, and the operator can be held legally liable. Some of the more common causes of negligent ATV accidents include:

- Untrained or Inexperienced drivers
- Driving too fast for the terrain or weather
- ATVs too large for the rider to control safely
- Carrying passengers on a single-rider ATV
- Driving under the influence of alcohol or drugs

But operators aren't the only ones who may be liable for accidents. Property owners might be accountable for accidents, too. For example, if trails aren't maintained properly and deep holes or pits, steep slopes, dangerous obstructions, or other hazards result in an injury or death, the person or

organization responsible for the land or trails can be held responsible. ATV manufacturers themselves can be found liable, too, if a dangerous product defects cause an accident.

To help prevent child injuries and deaths, Governor Haley signed Chandler's Law, which took effect in July of 2011. This law disallows children under six years old from operating an ATV, and prohibits operators under sixteen years old from carrying passengers. Operators under 16 years old must also wear helmets and eye protection.

ATV accidents can lead to expensive medical bills. One of your first tasks (after you receive appropriate medical care) should be to look for an insurance policy that may cover the accident. Note that standard automobile insurance usually doesn't cover ATV accidents. If negligence by the property owner caused an accident, his or her insurance may provide coverage, for example. If not, it's possible that the ATV operator's homeowner's insurance might be liable. If the operator was negligent, he or she also might be personally liable. The owner of the ATV may also be liable if he or she allowed someone who should not have been driving to operate the vehicle.

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FEBRUARY 2017 NEWSLETTER

CLIENT REVIEW:

5.0 ★★★★★

via Google

Ciera from Columbia, SC

“My experience with everyone at the Law Office of Kenneth Berger was absolutely excellent. Kenneth, Brandi, Philip and everyone at the office are always friendly, caring, and helpful. The entire staff’s commitment to treating clients like family, is nothing short of amazing. From the first meeting, and throughout my entire case, I felt as though I could not have been in better hands. They all worked efficiently and thoroughly towards the best results possible for me. I was always kept in the loop and never had to wonder what was going on with my case and if I had questions, they were answered promptly. I cannot thank them enough for all they did.”

NOTE: THIS PUBLICATION IS INTENDED TO EDUCATE THE GENERAL PUBLIC ABOUT PERSONAL INJURY, CIVIL LITIGATION AND WORKERS’ COMPENSATION ISSUES. THE INFORMATION CONTAINED IN THIS PUBLICATION IS NOT LEGAL ADVICE. EVERY CASE IS DIFFERENT. THE INFORMATION IN THIS NEWSLETTER MAY BE FREELY COPIED AND REDISTRIBUTED AS LONG AS THE NEWSLETTER IS COPIED IN ITS ENTIRETY.



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